

DATE: January 20, 2022

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In Re:)	
)	
[REDACTED])	Claims Case No. 2021-CL-061501.2
)	
Claimant)	
_____)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim.

DECISION

A retired member of the U.S. Navy requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2021-CL-061501, dated September 7, 2021. In that decision, DOHA upheld the Defense Finance and Accounting Service's (DFAS's) denial of the member's request to cover his spouse as his beneficiary under the Survivor Benefit Plan (SBP).

Background

The member retired from the Navy on November 1, 1997. Prior to his retirement, on July 1, 1997, the member submitted a DD Form 2656, *Data for Payment of Retired Pay*, noting that he was not married and electing child only SBP coverage for his dependent daughter. On November 24, 2004, the member married and on September 15, 2006, his twin daughters were born. On January 25, 2009, the member wrote to the Defense Finance and Accounting Service (DFAS) requesting that his retired pay account be updated. He provided DFAS both his marriage certificate and the birth certificates for his daughters, and requested that his daughters be covered under the SBP. He also sent a completed DD Form 2894, *Designation of Beneficiary Information*, designating his spouse as his 100% primary beneficiary for any arrears of pay (AOP) payable upon his death, and his daughters as 50% beneficiaries of his AOP in the event of both his wife's and his death. On November 1, 2019, the member submitted to DFAS a request to change his SBP beneficiary to his spouse. DFAS denied his request to designate his spouse as

his SBP beneficiary because more than one year had passed since the date of his marriage. The member appealed DFAS's denial of his request to DOHA.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the member's request to cover his spouse under SBP. The adjudicator explained that under statute and regulation, DOHA had no authority to allow the SBP coverage. However, she advised the member that Congress has occasionally provided for an open season for members to elect SBP coverage, including newly acquired spouses. She encouraged the member to pay close attention to any correspondence he receives from DFAS concerning his retired pay account, including his monthly Retiree Account Statement (RAS) for any information regarding an SBP open season. She also explained that he may find other available relief outside the purview of the DOHA by petitioning the Board for Correction of Naval Records (BCNR) under 10 U.S.C. § 1552.

In the member's reconsideration request, he states that DFAS has mishandled his retired pay account since 2009. After submitting his marriage certificate, his daughters' birth certificates and the DD Form 2894, he noticed that at the end of 2009, his wife was still not reflected as his SBP beneficiary on his RAS. He continued to contact DFAS regarding the matter. He states that he was continuously advised by DFAS that the error had been corrected. He states that each year a DFAS representative acknowledged a record of his phone calls and it was not until 2019, when he was instructed to resubmit his marriage license. He states that this was the first time DFAS notified him that his request to cover his spouse was denied because he did not elect coverage for her within a year of their marriage. He questions why he continues to pay for SBP coverage when according to DFAS, his spouse and children are not covered. He attaches his RAS from December 2020 reflecting his SBP premium cost of \$6.87. He requests that due to DFAS's errors, his account immediately be updated to reflect his spouse as his SBP beneficiary with his daughters as the alternatives.

Discussion

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of retired military members. A married member or a member with a dependent child may elect to participate in SBP when he becomes eligible for retired pay. *See* 10 U.S.C. § 1448(a)(2)(A). A member who is not married upon becoming eligible to participate in the plan but who later marries may elect to establish coverage for his spouse pursuant to 10 U.S.C. § 1448(a)(5). That section requires a written election, signed by the member, and received by the Secretary concerned within one year of the marriage. *See* DOHA Claims Case No. 2019-CL-031402.2 (September 24, 2019); and Comptroller General decisions B-258328, Feb. 15, 1995, and B-203903, Feb. 11, 1985. The Service Secretaries have delegated their authority under the SBP law to DFAS.

The Secretary of Defense has issued implementing regulations for the SBP law under the authority of 10 U.S.C. § 1455. The Department of Defense Financial Management Regulation (DoDFMR), volume 7B, chapter 43 (September 2005 Version), contains the regulations concerning member SBP elections. Paragraph 430701 states that a member who had no eligible beneficiaries at retirement and acquires a new spouse after retirement must make an election within one year of the marriage. Under paragraph 430301, the DD Form 1881, *SBP Election*

Certificate by Existing Retiree, is recommended for a member making such an election to provide SBP coverage for the first spouse acquired after retirement. However, if not using that form, the member's election must be in writing, signed by the member and contain all necessary information for establishing SBP coverage. Under paragraph 430707, the Secretary concerned (or designee) may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error. *See also* Department of Defense Instruction (DoDI) 1332.42, *Survivor Benefit Plan* (December 30, 2020).

In this case, when the member retired in 1997 he had no eligible spouse beneficiary. Therefore, he had a year from the date of his marriage in November 2004 to designate his spouse as his SBP beneficiary. Since he failed to make the election within one year of the date of his marriage, DFAS properly denied his request to cover his spouse as his SBP beneficiary. Although the member states that he was in constant contact with DFAS and was not told that his request to cover his spouse under the SBP was untimely until 2019, he did not make a written request of his election for SBP coverage for her within one year of their marriage. We further note that the member's submission of the DD Form 2894 to DFAS in 2009 is a separate action from electing his spouse as his SBP beneficiary. *See* DOHA Claims Case No. 2021-CL-031602.2 (June 28, 2021); and DOHA Claims Case No. 2018-CL-011903.2 (June 27, 2019). However, as DFAS has the DD Form 2894 on file, in the event of the member's death, his designation of any AOP will be paid to his spouse.

As for the member's question concerning the payment of SBP premiums on his RAS, we note that he is currently paying \$6.87 per month for SBP child coverage for his child born on April 21, 1991. Generally, a dependent child who is under 18 years of age or at least 18 but under 22 years of age pursuing a full-time course of study in school, is an eligible beneficiary for payment of the SBP annuity under 10 U.S.C. § 1447(11). In addition, we note that since the member elected child only SBP coverage at his retirement in 1997, any newly acquired child is automatically covered as his SBP beneficiary. *See* DoDFMR ¶ 430601(A)(5). The member should contact DFAS for any correction to his SBP coverage concerning his children.

The member cites various misinformation provided to him by DFAS. As explained by the adjudicator in the appeal decision, DOHA is bound by statute and regulation, and therefore, is unable to grant the SBP coverage for the member's spouse. However, he may have other available remedies that exist outside DOHA's authority. Under 10 U.S.C § 1454(a), the Secretary concerned may correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error. Further, 10 U.S.C. § 1552(a)(1) states that the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Either type of action is made through a civilian board, in this case the BCNR.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2021-CL-061501, dated September 7, 2021. In accordance with DoD Instruction 1340.21 (May 12, 2004) ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board